

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

- (*claimant*)

**CASE NO.**

MN1392/2008

against

Employer

- (*respondent*)

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. J. Reid  
Mr C. Ryan

heard this claim at Dublin on 15th April 2009

Representation:

\_\_\_\_\_

Claimants: Mason Hayes & Curran, Solicitors, South Bank House, Barrow Street, Dublin 4

Respondents: Brian Conroy BL instructed by Mr. Kevin Barry, O'Shea Barry, Solicitors, 4 Wellington Road, Dublin 4

The decision of the Tribunal was as follows:-

#### **Claimant's Case**

The claimant gave evidence that he was employed as a motor mechanic with the respondent from 1989 till the 1st August 2008. His employer had first discussed his retirement with him in May 2007 before his 65th birthday. He told his employer at this stage that he did not want to retire, he felt well enough to work, and that he had no contract with him stating that his retirement would take place when he reached 65 years of age. His employer had agreed to leave it till the following year.

In 2008 his employer informed him that he would be retiring. The claimant reiterated again that there was no contract in place stating that he had to retire at a certain age and added that there was no statutory retirement age in Ireland. On Tuesday 29th July 2008 his employer informed him that as on from Friday 1st August 2008 he would no longer be on the payroll. He was shocked as he

honestly did not think the employer was going to let him go. There was no written policy in place in respect of retirement age. He has not worked since his retirement.

Under cross examination he accepted that his employer had met with him on 7th May 2007 and indicated that he would have to retire his employment the end of July 2007. Then his employer had offered him two six month contracts which he refused. He had told his employer he would stay for another year. He could not recall if the respondent had told him he could have just one more year, but they did shake hands and left it for another year and would wait and see how his health was. The respondent was upset as he wanted him to retire.

On the 30th April 2008 the claimant wrote to his employer. Asking him to clarify his position as he intended to continue working. The respondent did not reply to him. He wrote another letter to the respondent on the 20th May 2008 within this he raised the issue that he had approached him on the 12th May 2008 him just seeking a “yes” or “no” as to whether he could continue working, the respondent had replied no. When the date of his 66th birthday passed he assumed that his employer had postponed his retirement. It was put to him that he had asked to defer his retirement till the age of 66 as he indicated his entitlements would commence then. He had mentioned this but it was irrelevant, he was on a good wage and had every reason to work and continue to work while in good health. He confirmed that on the 12th May the respondent had informed him that he would not be keeping him on, but no date of termination nor was the end of July mentioned.

### **Respondent's Case**

The managing director gave evidence on behalf of the respondent, the company has been established for twenty seven years, The claimant had commenced employment with them in November 1989, their working relationship was always very good and he was an excellent mechanic.

On the 7th May 2007 he told the claimant that he expected him to retire on his 65th birthday, this was to give him adequate notice. The claimant had reacted badly, he did not want to retire and he indicated that he would tell the respondent when he wanted to retire. The claimant had also mentioned he would not qualify for all his benefits till his 66th birthday. The next day he agreed to extend the claimant's employment for another year they shook hands on this but the claimant said he would have to think about it. The following day the claimant informed him that he would not be retiring in 2007 or 2008. He responded by telling the claimant that he would be retiring in July 2008 and that he would not be caving in on this decision.

In early May 2008 he had received the claimant's first letter dated 30th April 2008, he had discussed this with him and informed him that he would have to retire at the end of July 2008. He could not recall exactly what date he had said to the claimant he could have said “on your 66th birthday”. A few days before the end of July 2008 he had reminded the claimant that he would be off the payroll on the 1st August 2008 as his retirement date had passed.

There is no written policy in relation to the retirement age within the company but it would have been communicated orally to the mechanics that the retirement age is 65. They have never had a mechanic who reached the age of 65 while still working for them. The reason he had retired the claimant at the end of July and not his 66th birthday as he thought it would be more convenient for him.

**Determination**

The Tribunal reached an unanimous decision having heard the evidence a specific date on the claimant’s employment to terminate was in fact given to the claimant. This notice was sufficient to comply with the provisions regarding the length of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Accordingly the claim fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)